

Appeal from a decision of Arizona State Office, Bureau of Land Management, denying protest of mineral claimants' bond in favor of surface owner. A 17867.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Discovery: Generally -- Rules of Practice: Private Contests -- Rules of Practice: Protests

The validity of a mining claim on the issue of discovery of a valuable mineral deposit is not legally cognizable in a bond protest proceeding initiated by the surface owner under a Stock-Raising Homestead Act patent. Such a validity determination requires initiation of a contest with notice to the claimant and an opportunity for a hearing.

2. Act of December 29, 1916 -- Mineral Lands: Mineral Reservation -- Mining Claims: Surface Uses -- Rules of Practice: Protests -- Stock-Raising Homesteads

A decision approving a bond filed by a locator of mining claims for reserved minerals on land patented under the Stock-Raising Homestead Act will be affirmed in the absence of a showing that the amount of the bond is inadequate to cover damage to crops, improvements, and the value of the land for grazing purposes.

APPEARANCES: Kenneth D. Nyman, Esq., Phoenix, Arizona, for appellants; Jack DeVault and Dorothy DeVault, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal is brought by Robert M. and Gwen K. Michael from a decision of the Arizona State Office, Bureau of Land Management (BLM), denying their protest of the amount of the bond required of mineral claimants for protection of the rights of the surface owner. Appellants contend that the amount of the bond is inadequate, and challenge the right of the mineral claimants to develop the land.

Appellants are the owners of the surface estate in sec. 20, T. 10 N., R. 4 W., Gila and Salt River meridian, Yavapai County, Arizona. The land was patented under the Stock-Raising Homestead Act of December 29, 1916, ch. 9, § 1, 39 Stat. 862. ^{1/} Patents issued under the Act were required by statute to contain a "reservation to the United States of all minerals in said lands and the right to prospect for, mine, and remove the same." The BLM decision states that 32 placer mining claims (A MC 37625 through A MC 37656) were located on the land in question by Jack and Dorothy DeVault (respondents) on July 21, 1971. On May 18, 1982, respondents filed with BLM a bond in the amount of \$1,000 for the benefit of the owners of the surface estate. Subsequently, appellants protested the adequacy of the bond.

Thereafter, an onsite investigation was made by BLM. The April 19, 1983, memorandum of the BLM District Manager to the State Director disclosed the following assessment of the value of improvements and grazing forage on the land: "The replacement of the permanent improvements which consist of a permanent corral made of wire on posts 300' X 200', and a wood corral 30' X 40' is valued at \$1,500. The grazing or forage replacement is valued at \$1,000. A \$500 value for miscellaneous reclamation was determined." Based on the assessment, a bond in the amount of \$3,000 was recommended as adequate.

As a consequence of the investigation and the recommendation, BLM issued the decision of April 22, 1983, which is the subject of this appeal. In that decision, BLM increased the amount of the required bond to \$3,000 and dismissed appellants' protest. BLM held that the issue of the validity of the mining claims was beyond the scope of the protest and could be adjudicated only through a contest proceeding. Based upon the onsite examination, BLM held that a bond in the amount of \$3,000 was adequate to protect the value of improvements on the land as well as the value of the land for grazing.

In their statement of reasons for appeal, appellants allege that the amount of the bond is insufficient to cover reclamation of the patented land. Asserting that the cost of reclamation is \$1,200 per acre, appellants contend that the bond for the 640 acres of patented land should be at least \$768,000. Appellants also argue that there is no valuable mineralization on the land. Further, appellants take issue with the refusal of BLM to determine the validity of the claims in this proceeding. Appellants have requested a hearing.

[1] The BLM decision must be affirmed to the extent it declined to adjudicate the validity of respondents' mining claims in response to appellants' protest. A determination of the validity of a mining claim on the issue of whether a discovery of a valuable mineral deposit has been made requires a contest proceeding embracing notice to the claimant and an opportunity for a hearing. See United States v. Zimmers, 44 IBLA 142 (1979). Departmental regulation at 43 CFR 4.450-1 provides, in pertinent part:

^{1/} Repealed by Federal Land Policy and Management Act of 1976, P.L. 94-579, § 702, 90 Stat. 2743, 2787.

Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land * * * may initiate proceedings to have the claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations herein.

It is well established that the stock-raising homestead patentee or his successor in interest, as holder of title to the land except for the reserved minerals, has standing to challenge the validity of a mining claim on the patented land for lack of discovery of a valuable mineral deposit by initiation of a private contest pursuant to 43 CFR 4.450-1. Joanne M. Massirio v. Western Hills Mining Association, 78 IBLA 155, 157 (1983). Since a validity determination on the issue of discovery involves the elements of a contest, it could not properly be decided in response to appellants' protest of the bond. 43 CFR 4.450-2; see Elmer Silvera, 42 IBLA 11, 16 (1979).

[2] As noted previously, all patents issued under the Stock-Raising Homestead Act contained a reservation to the United States of all minerals in the land together with the right to prospect for, mine, and remove the same. Section 9 of the Act further defined the reserved mineral rights, providing that a mining claimant

shall have the right at all times to enter upon the lands * * * patented * * * for the purpose of prospecting for * * * mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the * * * patentee, and shall be liable to and shall compensate the * * * patentee for all damages to the crops on such lands by reason of such prospecting. Any person who has acquired from the United States the * * * mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the * * * minerals, first, upon securing the written consent or waiver of the homestead * * * patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the * * * owner of the land, to secure the payment of such damages to the crops or tangible improvements of the * * * owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon * * *.

Act of December 29, 1916, ch. 9, § 9, 39 Stat. 864, 43 U.S.C. § 299 (1976).

The amount of a bond filed under 43 U.S.C. § 299 (1976) by a locator of mining claims on lands patented under the Stock-Raising Homestead Act must be sufficient in amount to cover damage only to crops, improvements, and the

value of the lands for grazing purposes. Elmer Silvera, supra at 15. Appellants have not established the existence of such valuable improvements on the land as would make the decision erroneous. 2/ Appellants have not established error in the BLM appraisal of the value of the improvements or the value of the grazing forage on the land. Accordingly, the decision of BLM must be affirmed.

Appellants have not shown the existence of an issue of material fact cognizable in this bond protest proceeding. Accordingly, the request for an evidentiary hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge
Alternate Member

2/ Appellants have alleged certain improvements which the BLM report did not reflect, e.g., certain fencing, gates, roads, and paths. Some of these improvements are unlikely to be damaged by bona fide mining operations. Appellants have not submitted any evidence of the value of these improvements.

